



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

April 29, 2011

The Honorable Ken Bennett
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, Arizona 85007

RE: Senate Bill 1379 (consumer fireworks; regulation)

Secretary Bennett,

Today I vetoed Senate Bill 1379. I signed the enabling legislation last year to allow for the sale and use of fireworks (Laws 2010, Second Regular Session, Chapter 286), because it provided local governments the authority to decide for themselves whether or not to allow for the use of fireworks within their jurisdiction. The local control element is appropriate because of the varied nature of Arizona's landscape. I support the ability for each city and county to assess its own unique circumstances and make the appropriate decision at the local level.

Sincerely,

A handwritten signature in cursive script that reads "Janice K. Brewer".

Janice K. Brewer
Governor

cc: The Honorable Russell Pearce
The Honorable Andy Tobin
The Honorable Frank Antenori
Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1379

AN ACT

AMENDING SECTIONS 36-1601, 36-1605, 36-1606, 36-1609 AND 36-1610, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 16, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-2163.01 AND 41-2163.02; RELATING TO CONSUMER FIREWORKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-1601, Arizona Revised Statutes, is amended to
3 read:

4 36-1601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Consumer firework" means small firework devices that contain
7 restricted amounts of pyrotechnic composition designed primarily to produce
8 visible or audible effects by combustion and that comply with the
9 construction, chemical composition and labeling regulations prescribed in 49
10 Code of Federal Regulations ~~part~~ PARTS 172 and 173, regulations of the United
11 States consumer product safety commission as prescribed in 16 Code of Federal
12 Regulations parts 1500 and 1507 and the American pyrotechnics association
13 standard 87-1, standard for construction and approval for transportation of
14 fireworks, novelties and theatrical pyrotechnics, December 1, 2001 version.

15 2. "CONSUMER FIREWORKS RETAIL SALES FACILITY" MEANS A PERMANENT OR
16 TEMPORARY BUILDING OR STRUCTURE, CFRS STAND, TENT, CANOPY OR MEMBRANE
17 STRUCTURE THAT IS USED PRIMARILY FOR THE DISPLAY OR SALE OF CONSUMER
18 FIREWORKS TO THE PUBLIC.

19 ~~2.~~ 3. "Display firework" means large firework devices that are
20 explosive materials intended for use in fireworks displays and designed to
21 produce visible or audible effects by combustion, deflagration or detonation
22 as prescribed by 49 Code of Federal Regulations part 172, regulations of the
23 United States consumer product safety commission as prescribed in 16 Code of
24 Federal Regulations parts 1500 and 1507 and the American pyrotechnics
25 association standard 87-1, standard for construction and approval for
26 transportation of fireworks; novelties and theatrical pyrotechnics, December
27 1, 2001 version.

28 4. "DISTRIBUTION FACILITY" MEANS A PLACE WHERE CONSUMER FIREWORKS ARE
29 RECEIVED, STORED, PICKED, PACKAGED AND PACKED INTO SHIPPING CARTONS AND
30 SHIPPED TO OTHER DISTRIBUTION FACILITIES, MANUFACTURING FACILITIES, CONSUMER
31 FIREWORKS RETAIL SALES FACILITIES OR STORES.

32 ~~3.~~ 5. "Fireworks":

33 (a) Means any combustible or explosive composition, substance or
34 combination of substances, or any article prepared for the purpose of
35 producing a visible or audible effect by combustion, explosion, deflagration
36 or detonation, that is a consumer firework or display firework.

37 (b) Does not include:

38 (i) Toy pistols, toy canes, toy guns or other devices in which paper
39 caps containing not more than twenty-five hundredths grains of explosive
40 compound are used if constructed so that the hand cannot come in contact with
41 the cap when in place for the explosion.

42 (ii) Toy pistol paper caps that contain less than twenty-hundredths
43 grains of explosive mixture, or fixed ammunition or primers therefor.

1 (iii) Federally deregulated novelty items that are known as snappers,
2 snap caps, party poppers, glow worms, snakes, toy smoke devices and
3 sparklers.

4 ~~4-~~ 6. "Governing body" means the board of supervisors of a county as
5 to the area within the county but without the corporate limits of an
6 incorporated city or town and means the governing body of an incorporated
7 city or town as to the area within its corporate limits.

8 ~~5-~~ 7. "Permissible consumer fireworks":

9 (a) Means the following types of consumer fireworks as defined by the
10 American pyrotechnics association standard 87-1, standard for construction
11 and approval for transportation of fireworks, novelties and theatrical
12 pyrotechnics, December 1, 2001 version:

13 (i) Ground and handheld sparkling devices.

14 (ii) Cylindrical fountains.

15 (iii) Cone fountains.

16 (iv) Illuminating torches.

17 (v) Wheels.

18 (vi) Ground spinners.

19 (vii) Flitter sparklers.

20 (viii) Toy smoke devices.

21 (ix) Wire sparklers or dipped sticks.

22 (x) Multiple tube fireworks devices and pyrotechnic articles.

23 (b) Does not include anything that is designed or intended to rise
24 into the air and explode or to detonate in the air or to fly above the
25 ground, including, for example, firework items commonly known as bottle
26 rockets, sky rockets, missile-type rockets, helicopters, torpedoes, roman
27 candles and jumping jacks.

28 ~~6-~~ 8. "Person" includes an individual, partnership, firm or
29 corporation.

30 9. "STORE" MEANS A BUILDING THAT IS CLASSIFIED AS A MERCANTILE
31 OCCUPANCY THAT CONTAINS A VARIETY OF MERCHANDISE AND THAT IS NOT USED
32 PRIMARILY FOR THE RETAIL SALES OF CONSUMER FIREWORKS.

33 Sec. 2. Section 36-1605, Arizona Revised Statutes, is amended to read:

34 36-1605. Permitted uses

35 This article does not prohibit:

36 1. The sale at wholesale by a resident wholesaler, dealer or jobber of
37 fireworks that are not prohibited by this article.

38 2. The sale of fireworks that are to be and are shipped directly out
39 of the state.

40 3. The use of fireworks by railroads or other transportation agencies
41 for signal purposes or illumination.

42 4. The sale or use of explosives for blasting or other legitimate
43 industrial purposes.

1 5. The use of fireworks or explosives, or both, by farmers, ranchers
2 and their employees, and by state and federal employees who manage wildlife
3 resources, to rally, drive or otherwise disperse concentrations of wildlife
4 for the purpose of protecting property or wildlife.

5 6. The sale of permissible consumer fireworks OR FEDERALLY DEREGULATED
6 NOVELTY ITEMS by a ~~retail establishment~~ RETAILER IN A CONSUMER FIREWORKS
7 RETAIL SALES FACILITY OR STORE if the ~~retail establishment~~ RETAILER complies
8 with the rules adopted pursuant to section 36-1609.

9 7. The use of permissible consumer fireworks OR FEDERALLY DEREGULATED
10 NOVELTY ITEMS by the general public, ~~unless the use is prohibited by a~~
11 ~~governing body of an incorporated city or town~~ EXCEPT ON A STATE OR LOCALLY
12 OWNED PROPERTY.

13 Sec. 3. Section 36-1606, Arizona Revised Statutes, is amended to read:

14 36-1606. Consumer fireworks regulation: state preemption:
15 further regulation of fireworks by local
16 jurisdiction

17 A. The STORAGE, TRANSPORTATION, sale, POSSESSION, DISPLAY FOR RETAIL
18 SALE and use of permissible consumer fireworks AND FEDERALLY DEREGULATED
19 NOVELTY ITEMS are of statewide concern. The regulation of permissible
20 consumer fireworks pursuant to this article and their use BETWEEN JUNE 15
21 THROUGH JULY 5 AND DECEMBER 12 THROUGH DECEMBER 31 AND JANUARY 1 THROUGH
22 JANUARY 2 is not subject to further regulation by a governing body, except
23 that ~~an incorporated city or town may regulate the use of permissible~~
24 ~~consumer fireworks within its corporate limits and a~~ THE SALE AND USE OF
25 PERMISSIBLE CONSUMER FIREWORKS IS PROHIBITED IN A COUNTY THAT INCLUDES AT
26 LEAST TWO MILLION FIVE HUNDRED THOUSAND BUT NOT MORE THAN FIVE MILLION ACRES
27 OF FEDERAL LAND AND THAT HAS A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND
28 PERSONS AND ANY county may regulate the use of permissible consumer fireworks
29 within the unincorporated areas of the county during times when there is a
30 reasonable risk of wildfires in the immediate county. This article does not
31 prohibit the imposition by ordinance of further regulations and prohibitions
32 on the sale, use and possession of fireworks other than permissible consumer
33 fireworks AND FEDERALLY DEREGULATED NOVELTY ITEMS by a governing body. A
34 governing body shall not permit or authorize the sale, use or possession of
35 any fireworks in violation of this article.

36 B. AN INCORPORATED CITY OR TOWN OR A COUNTY WITHIN THE UNINCORPORATED
37 AREAS OF THE COUNTY MAY PROVIDE BY ORDINANCE FOR AN ANNUAL FEE FOR EACH
38 CONSUMER FIREWORKS RETAIL SALES FACILITY IN AN AMOUNT SUFFICIENT TO COVER ALL
39 LEGITIMATE COSTS FOR ALL NEEDED PERMITS, LICENSES AND AUTHORIZATIONS FROM
40 APPLICATION TO AND THROUGH PROCESSING, ISSUANCE AND INSPECTION, BUT IN NO
41 CASE TO EXCEED A TOTAL OF TWO HUNDRED DOLLARS.

42 C. AN INCORPORATED CITY OR TOWN OR A COUNTY WITHIN THE UNINCORPORATED
43 AREAS OF THE COUNTY MAY PROVIDE BY ORDINANCE FOR AN ANNUAL FEE FOR EACH STORE
44 CARRYING CONSUMER FIREWORKS IN AN AMOUNT SUFFICIENT TO COVER ALL LEGITIMATE

1 COSTS FOR ALL NEEDED PERMITS, LICENSES AND AUTHORIZATIONS FROM APPLICATION TO
2 AND THROUGH PROCESSING, ISSUANCE AND INSPECTION, BUT IN NO CASE TO EXCEED A
3 TOTAL OF FIFTY DOLLARS.

4 D. AN INCORPORATED CITY OR TOWN OR A COUNTY WITHIN THE UNINCORPORATED
5 AREAS OF THE COUNTY MAY PROVIDE BY ORDINANCE FOR AN ANNUAL FEE FOR EACH
6 DISTRIBUTION FACILITY IN AN AMOUNT SUFFICIENT TO COVER ALL LEGITIMATE COSTS
7 FOR ALL NEEDED PERMITS, LICENSES AND AUTHORIZATIONS FROM APPLICATION THROUGH
8 PROCESSING, ISSUANCE AND INSPECTION. THIS FEE SHALL NOT EXCEED ONE THOUSAND
9 DOLLARS.

10 E. IN AREAS WHERE FIRE SERVICES ARE PROVIDED BY A FIRE DISTRICT, THE
11 RESPECTIVE FIRE DISTRICT SHALL RECEIVE FIFTY PER CENT OF FEES PERMITTED IN
12 THIS SECTION.

13 F. AN INCORPORATED CITY OR TOWN OR A COUNTY WITHIN THE UNINCORPORATED
14 AREAS OF THE COUNTY SHALL NOT:

15 1. IMPOSE ANY FEE OR CHARGE, OTHER THAN THE FEES AUTHORIZED BY THIS
16 SECTION, ON THE RETAIL SALE OF PERMISSIBLE CONSUMER FIREWORKS.

17 2. PROHIBIT OR RESTRICT THE DISPLAY FOR RETAIL SALE OF PERMISSIBLE
18 FIREWORKS IN CONSUMER FIREWORKS RETAIL SALES FACILITIES OR STORES THAT COMPLY
19 WITH THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD CODE 1124 FOR THE
20 MANUFACTURE, TRANSPORTATION, STORAGE AND RETAIL SALES OF FIREWORKS AND
21 PYROTECHNIC ARTICLES, 2006 EDITION AS ADOPTED BY THE STATE FIRE MARSHAL
22 PURSUANT TO SECTION 36-1609 BETWEEN JUNE 15 THROUGH JULY 5 AND DECEMBER 12
23 THROUGH DECEMBER 31 AND JANUARY 1 THROUGH JANUARY 2.

24 3. IMPOSE ON A RETAIL SELLER ANY FINANCIAL GUARANTEE REQUIREMENTS,
25 INCLUDING BONDING OR INSURANCE PROVISIONS, CONTAINING RESTRICTIONS OR ANY
26 OTHER CONDITIONS NOT IMPOSED ON THE SAME BASIS ON ALL OTHER BUSINESS
27 LICENSEES.

28 4. IMPOSE SIGNAGE REQUIREMENTS ON A RETAIL SELLER BEYOND THOSE
29 REQUIRED BY THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD CODE 1124 FOR
30 THE MANUFACTURE, TRANSPORTATION, STORAGE AND RETAIL SALES OF FIREWORKS AND
31 PYROTECHNIC ARTICLES, 2006 EDITION.

32 G. THE SALE OF PERMISSIBLE CONSUMER FIREWORKS IN A CONSUMER FIREWORKS
33 RETAIL SALES FACILITY IS NOT ALLOWED IN AN AREA THAT IS ZONED FOR RESIDENTIAL
34 USE.

35 Sec. 4. Section 36-1609, Arizona Revised Statutes, is amended to read:

36 36-1609. State fire marshal; adoption of code; sale of
37 permissible consumer fireworks

38 A. The state fire marshal shall adopt rules pursuant to title 41,
39 chapter 6 to carry out this article, including a rule that adopts the
40 national fire protection association code for the manufacture,
41 transportation, storage and retail sales of fireworks and pyrotechnic
42 articles, 2006 edition. A person who sells permissible consumer fireworks to
43 the public shall comply with those rules relating to the storage of consumer

1 fireworks and relating to the retail sales of consumer fireworks before
2 selling permissible consumer fireworks to the public.

3 B. A person shall not sell or ~~permit~~ ALLOW or authorize the sale of
4 permissible consumer fireworks to a person who is under ~~sixteen~~ EIGHTEEN
5 years of age.

6 Sec. 5. Section 36-1610, Arizona Revised Statutes, is amended to read:

7 36-1610. Prohibited use of fireworks on state land; civil
8 penalty

9 A. ~~The state fire marshal may impose a civil penalty of one thousand~~
10 ~~dollars for~~ Each incident of prohibited use of fireworks on state land in
11 violation of this article IS SUBJECT TO A CIVIL PENALTY OF ONE THOUSAND
12 DOLLARS.

13 B. ~~The state fire marshal shall deposit, pursuant to sections 35-146~~
14 ~~and 35-147,~~ Civil penalties collected pursuant to this section SHALL BE
15 DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147 in the fire suppression
16 revolving fund established by section 37-623.02.

17 Sec. 6. Title 41, chapter 16, article 3, Arizona Revised Statutes, is
18 amended by adding sections 41-2163.01 and 41-2163.02, to read:

19 41-2163.01. Rules prescribing licensure for fireworks
20 importers-exporters; fees

21 A. THE STATE FIRE MARSHAL SHALL ADOPT RULES PRESCRIBING LICENSURE
22 REQUIREMENTS FOR FIREWORKS IMPORTERS-EXPORTERS, WHOLESALERS AND RETAIL
23 FIREWORKS LOCATIONS AND MAY COLLECT FEES.

24 B. FOR THE PURPOSES OF THIS SECTION:

25 1. "IMPORTER-EXPORTER" MEANS ANY PERSON WHO FOR ANY PURPOSE DOES ANY
26 OF THE FOLLOWING:

27 (a) BRINGS FIREWORKS INTO THIS STATE OR CAUSES FIREWORKS TO BE BROUGHT
28 INTO THIS STATE.

29 (b) PROCURES THE DELIVERY OR RECEIVES SHIPMENTS OF ANY FIREWORKS INTO
30 THIS STATE.

31 (c) BUYS OR CONTRACTS TO BUY FIREWORKS FOR SHIPMENT INTO THIS STATE.

32 (d) SELLS, CONSIGNS OR DELIVERS FIREWORKS LOCATED WITHIN THIS STATE
33 FOR DELIVERY, USE OR SALE OUT OF THIS STATE.

34 2. "RETAILER" MEANS ANY PERSON WHO, AT A CONSUMER FIREWORKS RETAIL
35 SALES FACILITY OR STORE, SELLS, TRANSFERS OR GIVES FIREWORKS TO A CONSUMER OR
36 USER.

37 3. "WHOLESALER":

38 (a) MEANS A PERSON WHO SELLS FIREWORKS TO A RETAILER OR ANY OTHER
39 PERSON FOR RESALE.

40 (b) INCLUDES ANY PERSON WHO SELLS DANGEROUS FIREWORKS TO PUBLIC
41 DISPLAY PERMITTEES.

42 (c) DOES NOT INCLUDE AN IMPORTER, EXPORTER OR MANUFACTURER THAT SELLS
43 ONLY TO WHOLESALERS.

1 41-2163.02. State fire marshal fund

2 THE STATE FIRE MARSHAL FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED
3 PURSUANT TO SECTION 41-2163.01. THE OFFICE OF THE STATE FIRE MARSHAL SHALL
4 ADMINISTER THE FUND. MONIES IN THE FUND SHALL BE DISTRIBUTED AS FOLLOWS:

5 1. THE FIRST TWO HUNDRED AND FIFTY THOUSAND DOLLARS RECEIVED EACH
6 FISCAL YEAR AS A CONTINUING APPROPRIATION TO THE OFFICE OF THE STATE FIRE
7 MARSHAL FOR DATA COLLECTION, PUBLIC EDUCATION AND ENFORCEMENT. MONIES
8 APPROPRIATED PURSUANT TO THIS PARAGRAPH ARE EXEMPT FROM THE PROVISIONS OF
9 SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

10 2. ALL OTHER MONIES EACH FISCAL YEAR SHALL BE DEPOSITED IN THE STATE
11 GENERAL FUND.

12 Sec. 7. Legislative intent

13 The legislature intends by this act that the state fire marshal collect
14 fees pursuant to section 41-2163.01, Arizona Revised Statutes, as added by
15 this act, that do not exceed the following:

16 1. For a fireworks importer-exporter license, one thousand five
17 hundred dollars.

18 2. For a fireworks wholesaler license, two thousand five hundred
19 dollars.

20 3. For a retail fireworks license, fifty dollars.

21 Sec. 8. Exemption from rule making

22 For the purposes of this act, the state fire marshal is exempt from the
23 rule making requirements of title 41, chapter 6, Arizona Revised Statutes,
24 for one year after the effective date of this act.

25 Sec. 9. Emergency

26 This act is an emergency measure that is necessary to preserve the
27 public peace, health or safety and is operative immediately as provided by
28 law.

Passed the House April 18, 20 11,

Passed the Senate March 10, 20 11,

by the following vote: 42 Ayes,

by the following vote: 22 Ayes,

17 Nays, 1 Not Voting

8 Nays, 0 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1379

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 20 4

by the following vote: 24 Ayes,

6 Nays, 0 Not Voting

President of the Senate *With Emergency*

Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 20 4

at 12:00 o'clock P. M.

Secretary to the Governor

Approved this _____ day of

VETO
at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20 _____

S.B. 1379

at _____ o'clock _____ M.

Secretary of State